STRADLEY RONON

Tax Insights

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Tax Practice Group

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IRS Issues Ruling on REIT Qualifying Income

The IRS issued Private Letter Ruling 201944011 (https://www.irs.gov/pub/irs-wd/201944011.pdf) holding that rental income from boat slips and storage spaces constitutes rents from real property under Section 856(d)(1). (Section references are to the Internal Revenue Code of 1986, as amended.) The IRS also found that income from services provided at property was not impermissible tenant service income and, therefore, did not cause any portion of rents received by taxpayer from property tenants to fail to qualify as rents from real property under Section 856(d).

IRS Issues Proposed Reliance Regulations on Eligible Terminated S Corporation Rules

The IRS issued proposed regulations (https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-24098.pdf) providing rules (a) regarding the definition of an eligible terminated S corporation (ETSC); (b) relating to distributions by an ETSC after the post-termination transition period (PTTP); and (c) revising the current regulations to update and clarify rules regarding the allocation of current earnings and profits to distributions of money and other property.

A C corporation's distribution to its shareholders – with respect to their stock ownership – is treated as a taxable dividend to the extent of the corporation's earnings and profits (E&P). However, following the termination of a corporation's S election, shareholders of the resulting C corporation can, during the PTTP (generally the one-year period after the S election is terminated), treat the C corporation's distribution as a distribution from the corporation's accumulated adjustments account (AAA). Shareholders receive such distributions tax-free to the extent of their basis in the stock for which they received the distribution, and the distribution is taxed as gain from the sale of property to the extent the distribution exceeds the shareholder's basis in that stock. Once a corporation exhausts its AAA, subsequent distributions are treated as dividends.

Section 1371(f), which was added by the 2017 Tax Cuts and Jobs Act, extends the period during which a qualified distribution can be sourced, in whole or in part, from AAA after the PTTP expires until the corporation exhausts its AAA. This additional period is the Eligible Terminated S Corporation period.

IRS Issues Proposed Regulations Updating Tables to Determine Required Minimum Distributions

The IRS has issued proposed regulations (https://www.federalregister.gov/documents/2019/11/08/2019-24065/updated-life-expectancy-and-distribution-period-tables-used-for-purposes-of-determining-minimum) that would update the life expectancy and distribution tables used to calculate required minimum distributions from qualified retirement plans, individual retirement accounts and annuities, and certain other tax-favored employer-provided retirement arrangements. The proposed updates reflect current mortality data.

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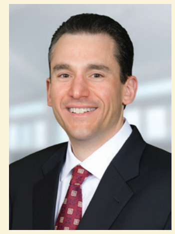
IRS Issues Draft of Revised Form 8996 for Qualified Opportunity Zone (QOZ) Funds

The IRS issued a draft revised Form 8996 (https://www.irs.gov/pub/irs-dft/f8996--dft.pdf) to be completed annually by qualified opportunity funds (QOFs). The draft revised Form 8996 contains the same initial four parts that are on the current version of Form 8996. The draft adds Parts V-VII. Part V calls for a taxpayer to enter every census tract where QOZ business property directly owned or leased by the taxpayer is located. In Part VI, for every QOZ business in which the taxpayer holds stock or a partnership interest, the taxpayer must enter every census tract in which the tangible property of the QOZ business is located and the employer identification number (EIN) of that QOZ business. Part VII is a continuation of Part VI, to give the taxpayer more space to list census tracts.

IRS Practice Unit Addresses Partial Dispositions of Buildings

The IRS released a practice unit (https://www.irs.gov/pub/irs-utl/dce_p_252_04_03.pdf) on the five steps involved in examining a taxpayer who has elected a partial disposition of a building or its structural components to help verify a taxpayer's compliance with the Section 168 disposition regulations.



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NYSBA Tax Section Issues Report on Publicly Traded Property Regulations

The New York State Bar Association Tax Section has submitted a report (https://www.nysba.org/Sections/Tax/Tax_Section_Reports/Tax_Section_Reports_2019/1425_Tax_Report.html) on final regulations (T.D. 9599), published in September 2012, clarifying the circumstances that cause property to be considered publicly traded when determining the issue price of a debt instrument.

